

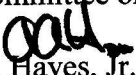


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August 21, 2012

TO: The Honorable Mike Bell, Chair
Senate Committee on Government Operations

The Honorable Jim Cobb, Chair
House Committee on Government Operations

FROM: 
Arthur A. Hayes, Jr., CPA
Director of the Division of State Audit

SUBJECT: Follow-up on the January 2011 Department of Education and State Board of
Education performance audit

This follow-up of the 2011 performance audit of the Department of Education and State Board of Education was conducted pursuant to the Public Acts of 2011, Chapters 43 and 476, which directed the Division of State Audit to provide its findings to the House and Senate Government Operations committees by July 1, 2013, on the department's and board's responses to the findings and recommendations in the January 2011 audit. Under Section 4-29-234, *Tennessee Code Annotated*, the Department of Education and the State Board of Education are scheduled to terminate on June 30, 2013.

We found the department and state board have taken sufficient action to resolve some, but not all, of the findings related to their operations identified in the January 2011 performance audit.

Follow-up Information

2011 Performance Audit Finding 1:

The department's lack of oversight over the child care program hinders its ability to ensure that child care centers meet board standards

State law requires the department to review and approve child care centers that meet standards set by the State Board of Education. The department reviews child care centers operated by local school systems or church-related schools and all childhood programs. We found management of the program exercised little oversight over the staff. This lack of oversight

led to inconsistencies in documenting evaluations among field offices. Without proper oversight, the commissioner cannot ensure that child care centers meet the board's standards.

State Audit's 2012 Follow-up Review Results

Although the department made significant changes to how it documents its oversight over those select child care programs which fall under its statutory authority, some of these key mechanisms are in the process of changing yet again for the 2012-2013 school year. Therefore, the department is still in the process of implementing this recommendation.

We made several recommendations in the 2011 report to improve how the department oversees child care centers operated by local school systems, child care centers which are church-related, and early childhood programs. Specifically, we made several recommendations, addressing the need for

- updated and improved inspection forms, including clear instructions on how to complete the forms;
- internal controls to verify program evaluators review all programs as required;
- regular Program Director visits with program evaluators in the field;
- instructions for program evaluation staff and child care program staff to report major monitoring irregularities, such as if monitoring is not occurring as required, to the Commissioner's Office;
- school officials to sign and submit an updated annual report every year; and
- regular reviews of the program by the Department of Education's internal auditor, including assurances that certificates of approval are being issued in a timely manner.

The status of this 2011 group of recommendations is as follows:

Updated, Improved Inspection Forms – In response to our recommendations, the department updated the forms completed by program reviewers when inspecting child care programs. We reviewed the revised forms, interviewed program management, and interviewed program reviewers. The revised forms are improved compared to previous forms. For example, the new forms require that the program reviewers mark all inspected items as compliant or non-compliant. Additionally, the forms were created using a spreadsheet so that they could be completed and transmitted electronically.

However, the inspection process, including the forms, is being substantially revamped for the 2012-2013 school year as part of an ongoing department effort to identify and implement

needed improvements. All programs will now conduct a self-assessment, and the program reviewers will be responsible for selecting and validating a sample of each program's self-assessment results.

Because this process has only been in place since July 1, not enough time has elapsed for the department, or the auditors, to conduct a fair assessment. Therefore, the department is still in the process of implementing this recommendation.

Internal Controls – We reviewed department documentation regarding steps taken to ensure that program reviewers conduct all program reviews as required. We also interviewed program management, interviewed program reviewers, reviewed a related internal audit report, and reviewed a sample of 94 program review files in West, Middle, and East Tennessee.

We found that the department incorporated several new controls to strengthen the oversight within the child care program. For example, child care program evaluators are now required to electronically submit all of their evaluation reports and a cumulative log of their evaluations to the central office on a monthly basis, and these logs are compared against the documentation of evaluation visits. The central office randomly contacts five child care programs from each program evaluator's log to verify the programs were inspected. Similarly, evaluators must obtain a child care program representative's signature on a designated form every time they inspect a child care program.

However, existing controls could be enhanced. For example, when the central office contacts the five child care programs from each evaluator's monthly log to confirm that an evaluation visit did occur and thus the log is accurate, they do not follow up if the child care program fails to respond. Follow-up should occur because the child care program might be hesitant to report problems involving the evaluator assigned to monitor its program. Additionally, these efforts would help ensure that the department's listing of program contact information is as up-to-date as possible, which has been a problem in the past.

Additionally, we recommended the department consider rotating child care program evaluators within regional offices. The Program Director believes that rotation would not be cost-beneficial because travel and personnel costs would increase. Currently, child care program evaluators inspect those programs closest to their homes, thus minimizing travel costs. If evaluators within the same regional office were to periodically switch responsibility for the programs they are responsible for inspecting, they would need to travel to areas away from their homes, but still within the same region. While this would increase costs, it may be necessary to reduce the likelihood that one person can conceal problems from disclosure by having total control over evaluation of a large group of schools. Therefore, we recommend that management above the program level consider whether at least some job rotation among program evaluators would be cost-beneficial with the larger context of the department-wide travel budget. If job rotation is not feasible, then the Commissioner should develop other approaches to address the

noted risks. Overall, we found that the department is in the process of implementing this group of recommendations.

Regular Program Director Visits – The department reports that the Program Director has not been regularly visiting program evaluators in the field. However, the Assistant Commissioner over the program anticipates adding such field visits in the Program Director's upcoming annual performance evaluation plan. Therefore, as of this follow-up, this recommendation has not been implemented.

Instructions to Report Major Monitoring Discrepancies to the Commissioner – We reviewed department communication to child care programs directing the programs to report major inspection discrepancies, such as skipped required monitoring visits, to the Commissioner's office. However, the department did not provide similar directions to internal department management and staff. Therefore, the department is still in the process of implementing this recommendation.

Signed, Updated Annual Program Reports – We reviewed documentation that the department had notified evaluators that signatures would be required and expected on all annual reports. A subsequent review by the department's internal audit unit found that this was not consistently occurring. However, a new Annual Report Form will be used starting July 1, 2012. Because a new process will be implemented for the 2012-2013 school year, we conclude that the department is still in the process of implementing this recommendation.

Internal Audits – We reviewed an internal audit report on the child care program and internal audit plans, and we interviewed the internal audit director. We found that the department has begun to conduct such reviews and has scheduled additional future review. This recommendation has been implemented.

2011 Performance Audit Finding 2:

Mistakes by a contractor and a department employee jeopardize the department's compliance with federal laws

The federal Family Education Rights and Privacy Act requires education agencies to safeguard students' personally identifying information. Two situations occurred during the audit period that jeopardized the department's compliance with the act. One was the responsibility of a department contractor and the other was an error by department staff.

State Audit's 2012 Follow-up Review Results

We reviewed policies and contract language developed by the department in response to personally identifiable data breaches, interviewed the department's legal counsel and procurement director, obtained and reviewed documentation about the department's response to

a personally identified data breach which occurred after the prior audit report was released, identified federal recommendations for data breach response policies, and tested a sample of 30 active contracts for fiscal years ending June 30, 2012 and 2013 (as of May 10, 2012) to determine if they included the contract language developed by the department in response to the data breaches.

We found that the department has developed and adopted a data breach response policy consistent with our prior audit recommendations. Additionally, the department has developed and implemented new contract language clearly outlining contractor responsibilities regarding personally identifiable information and breaches. Therefore, the department has satisfactorily resolved this finding.

2011 Performance Audit Finding 3:

The department does not have a centralized process to verify Local Education Agencies' self-reported data for annual school approvals

Local Education Agencies (LEAs) must comply with many state laws and State Board of Education rules. The LEAs self-report compliance, and the department verifies some of the self-reported information. However, there is no centralized mechanism to assure the commissioner that LEAs are in full compliance. This leaves the department at risk of approving LEAs that are not in compliance because the Office of School Approval may not be aware of noncompliance found by other divisions and because some rules and laws are not checked by any agency.

State Audit's 2012 Follow-up Review Results

Our review found that the department has implemented two out of the three recommendations. Specifically, the department's internal audit has conducted the first of annually planned audits of a sample of Local Education Agencies' (LEAs') documentation and other areas not already subject to review. However, the department has not yet implemented our recommendation to develop a centralized process to verify Local Education Agencies' self-reported data for annual school approvals. Rather, the Assistant Commissioner of Data and Communications reports the department plans to conduct a comprehensive review and possible reorganization of its monitoring responsibilities, which could include such a centralization process.

Therefore, while the department has taken some steps to implement our recommendations, it should ensure that its planned formal review of its monitoring responsibilities include the development of some sort of centralized mechanism to verify LEAs' self-reported data for annual school approvals. As a result, the department is still in the process of implementing this recommendation.

2011 Performance Audit Finding 4:

The State Board of Education did not always notify the Secretary of State's Office of board member vacancies and appointments

State law requires the board to notify the Secretary of State's Office when positions are scheduled to become vacant, become vacant unexpectedly, and when appointments are made. When the board does not send this information to the Secretary of State, the Secretary of State's Office cannot fulfill its duty to publish open appointments, and this lack of information may hinder the timely appointment of members.

State Audit's 2012 Follow-up Review Results

We reviewed Secretary of State guidance regarding board member vacancies and appointments, interviewed State Board staff responsible for making such notifications, and reviewed documentation for all board vacancies occurring between January 2011 and April 26, 2012. We found that the State Board appropriately notified the Secretary of State's office in a timely manner about five of the six board member vacancies occurring between January 2011 and January 26, 2012. The State Board's Executive Secretary reports that the State Board was late in submitting the notification for the sixth vacancy due to a simple oversight. The impacted board member continued to serve until a replacement was named.

Therefore, although the State Board acted appropriately in most cases, it needs to ensure that it notifies the Secretary of State of all board vacancies in a timely manner. As a result, the department is still in the process of implementing this recommendation.

2011 Performance Audit Finding 5:

The State Board of Education does not require its board members and staff to complete annual conflict-of-interest statements

Although the board members and staff complete conflict-of-interest statements, the board does not require them to complete a new form every year.

State Audit's 2012 Follow-up Review Results

All board members and executive staff are now required to complete annual conflict-of-interest statements and to update those statements whenever new conflicts arise. Additionally, the board's secretary reports that per the board legal counsel's research, these statements will be kept on file for three years, as recommended by the January 2011 audit report. In addition to interviewing the executive secretary, we watched video archives of the April 2012 State Board meeting, where annual conflict-of-interest statements were discussed, and obtained documentation verifying that all current board executive staff and board members (as of May 1,

2012) have signed such statements within approximately the past 12 months. Therefore, the State Board has satisfactorily resolved this finding.

2011 Performance Audit Finding 6:

The department lacks a formal plan to address teacher shortages

Our 2006 audit found the department lacked a centralized, formal strategic plan to address teacher shortages. The department concurred with our finding and responded with a plan for recruitment; however, department staff stated that little had been done with this plan (due to a lack of funding) and the plan was out of date. The department needs to regularly evaluate its teacher recruitment efforts, update its teacher recruitment strategic plan, and use regularly updated, timely data and analysis in order to assess current and potential problems.

State Audit's 2012 Follow-up Review Results

We interviewed the department's recruitment coordinator and Associate Director for Compensation – Teachers and Leaders Division, and we reviewed the department's current recruitment plan update/status report and strategic plan documentation related to teachers' issues.

We found that while the department has a recruitment plan document, the current Commissioner (who was appointed after the January 2011 audit was released) has refocused the department's efforts via a new strategic plan. The first priority of this plan is to "Expand kids' access to effective teachers and leaders." The department's key strategies to implement this goal are to:

- create marketplaces and supports for districts to hire effective teachers and principals,
- strengthen certification criteria and link licensure more clearly to effective teachings,
- expand effective teacher preparation programs, and
- expand the reach of effective teachers and leaders to access more kids.

While this priority and its associated strategies do not mention teacher recruitment per se, recruiting quality teachers is inherent in the plan. In this manner, because the commissioner has focused teacher-related efforts toward the new strategic plan and, therefore, away from the recruitment plan, the existence of a formal, separate recruiting plan may not be as critical as in the past.

Regardless of whether the department focuses its teacher recruitment efforts through the strategic plan or a separate, distinct teacher recruitment plan, it needs quality data about teacher shortages to inform its efforts. Currently, the department relies on the number of teacher license

permits and waiver applications, which are issued when schools wish to hire teachers who are not endorsed in the academic areas in which they will be teaching or non-licensed teachers, to gauge potential shortages. However, the department reports it is in the process of building a database which will capture more in-depth teacher shortage information.

Although the department may not need to depend on a separate, formal teacher recruitment plan in the future, it needs to ensure that it meets the intent of all of the recommendations we made in the 2011 audit report regarding the teacher recruitment plan. Specifically, we recommended that the department should include information and goals related to attracting and retaining teachers trained in other states as well as those trained in Tennessee. Therefore, as the department implements the new strategic plan, it should ensure it considers both teachers trained in and outside of Tennessee when developing new programs and working within existing programs.

cc: Kevin Huffman, Commissioner, Department of Education
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